REMARKS/ARGUMENTS

The Office Action of February 12, 2003 included a rejection of claim 23 under 35 U.S.C. § 112, second paragraph. Specifically, the Examiner noted an antecedent basis issue for the claim. Claim 23 has been amended to address the antecedent basis issue.

The Office Action also included claim rejections under 35 U.S.C. § 103. Claims 22 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sinks (U.S. Pat. No. 1,054,321) in view of Lang et al. (U.S. Pat. No. 5,039,535). The Examiner indicates it would have been obvious to one of ordinary skill in the art to incorporate the pizza cooking of Lang et al. into the invention of Sinks.

Applicants respectfully traverse the rejection. There is no teaching or suggestion in either reference to cook a pizza by applying heat to only a portion of the pizza at a time as each portion rotates through the heating chamber as recited in claim 22. In the Lang et al. reference, both the upper and lower housings extend completely over and under, respectively, the pizza. Heat is constantly delivered to the entire pizza as taught by Lang et al., as the entire pizza rests within the heating chamber.

Sinks concerns a manually operated device in which a turn-table 3 can be rotated relative to a casing 1 including interior burners 2. Sinks includes a central spindle 4 which projects through food supporting grill 8 in order to mount spindle 4 to casing 1 with an upper guide bearing 6.

There is no teaching or suggestion in Sinks that a food item can be centrally placed on grill 8, and then cooked by only having a portion of the food item within casing 1 at any giving time. In fact, such cooking is impossible with the Sinks device due to the presence of central spindle 4 projecting above grill 8. A pizza could not be centrally located as required by claim 22.

Neither Sinks or Lang et al. teaches or suggests cooking a pizza by: 1) placing a pizza on a generally circular, rotatable food support member having a central axis of rotation where the pizza is positioned over the axis of rotation; and 2) rotating the pizza multiple times through a heating chamber defined by upper and lower housings, the upper and lower housings extending over and under respectively only a portion of the food support member. As recited by claim 22, the heating members in the housings apply heat to only a portion of the pizza as the portion of

the pizza rotates through the heating chamber to cook the pizza. Neither Sinks nor Lang et al. teaches or suggests that a pizza can be cooked in this manner. In both references, the food item is entirely within the heating chamber during the cooking process. Sinks teaches at page 1, line 73 "articles placed upon the grill by the operator are readily turned into close proximity to the heating means and may be readily brought out again for inspection and for turning on the grill." There is no teaching or suggestion that cooking of a pizza could occur while portions of the pizza are in the heating chamber, and the remaining portions are outside of the heating chamber.

Various reasons are supplied by the Examiner in the Office Action for combining Sinks and Lang et al. Applicants respectfully submit the references are not combinable in the manner suggested by the Examiner to result in the method of claim 22. Further, the Examiner has used hindsight analysis. Claim 22 concerns a method of cooking wherein a pizza is cooked without the necessity for an appliance as large as the pizza itself. Sinks teaches that the casing 1 is as large as the food item since the food item is disposed between the central axis defined by spindle 4 and an outside edge of grill 8. Further, Sinks is a manually operated device that is selectively moved by the operator to place food items into casing 1, and to remove food items. Lang et al. on the other hand is concerned with rotating a pizza contained entirely within a heating chamber in order to cook the pizza. For these reasons, Sinks and Lang el al. are not combinable to support a rejection of the method steps in claim 22.

Applicants submit the Examiner has conducted an impermissible hindsight-based analysis that uses Applicants' claims as a blueprint to pick and choose from isolated features in the prior art to construct the claims. In considering obviousness, the Examiner may not combine references unless there is a reason, suggestion, or motivation in the prior art that would lead one of ordinary skill in the art to make the combination, and that would also suggest a reasonable likelihood of success. Smiths Indus. Med. Sys. vs. Vital Signs, Inc., 183 F.3d 1347, 1356 (Fed. Cir. 1999). The mere possibility that references could be combined is insufficient to support a conclusion of obviousness. Gentry Gallery, Inc. v. Berkline Corp., 134 F.3d 1473, 1478 (Fed. Cir. 1998). Consequently, there is no legal basis for concluding that an invention would have been obvious "solely because it is a combination of elements that were known in the art at the time of the invention." Smiths Indus. Med. Sys., 183 F.3d at 1356.

It is erroneous for the Examiner to "use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." Ecolochem, Inc.

v. S. Cal. Edison Co., 227 F.3d 1361, 1371 (Fed. Cir. 2000). To prevent hindsight-based obviousness analysis, the Federal Circuit has required a clear and particular showing of a teaching or motivation to combine the prior art references relied upon to invalidate claims. In re Dembiczak, 175 F.3d 994, 999 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence of motivation to combine the references. Ecolochem, 227 F.3d at 1372. For that reason, the Federal Circuit has required a specific finding of a suggestion or motivation to combine. Ruiz v. A.B. Chance Co., 234 F.3d 654, 665 (Fed. Cir. 2000).

In this case, the Examiner has included various reasons for combining the references including that pizza was a popular food item, and that Lang et al. can accommodate larger food items, such as pizza, due to its lack of a central, protruding shaft. Also, the Examiner has identified a need to reduce the risk of burns to the operator. These reasons for combining are based on hindsight reconstruction with respect to the method for cooking a pizza of claim 22. The devices and related methods taught by Sinks and Lang et al. are different. Lang et al. teaches controlled rotation of the food item while the food item is completely contained within the heating chamber. Sinks teaches a manually rotatable turn-table 3 which can be moved at selected times relative to a casing 1 which covers one half of the turn-table in order to allow the user to manually position food items into and out of casing 1 at desired times. Applicants respectfully submit there is no teaching or suggestion to combine Sinks and Lang et al. to result in the method of claim 22.

Even if Sinks and Lang et al. are combined, the references fail to teach or suggest that a pizza can be cooked while centered on a food support, with "the upper and lower housings extending over and under respectively only a portion of the food support member such that heating members in the housings apply heat to only a portion of the pizza as the portion of the pizza rotates through the heating chamber." Sinks teaches that the food item is either entirely in casing 1, or outside of casing 1. To the extent Sinks has a food item entering casing 1 wherein a portion is within casing 1, and a portion is outside of casing 1, this only occurs during the checking or turning process when the operator moves grill 8 so as to position the food item within the heating chamber of casing 1, or to remove it. There is no centrally located food item which constantly has a portion outside of the heating chamber. In Lang et al., no portion of the food item is outside of the heating chamber.

There is simply no teaching or suggestion in the prior art of a method of cooking a rotating pizza, where a first portion of the pizza is within a heating chamber and a remaining portion is outside of the heating chamber. Without Applicants' teaching, the Examiner has engaged in speculation that such a method was obvious or that it would even work to effectively cook pizza. Referring to Sinks or Lang et al. does not support the Examiner's assertions that Applicants' method is obvious. In fact, referring to Sinks or Lang et al. shows that the teachings were to completely place the food item in the heating chamber for cooking.

For these reasons, claims 22 and 23 are patentable over Sinks and Lang et al. In light of the above remarks, Applicants assert that the claims are in a condition for allowance and respectfully request the same. Re-examination and reconsideration are respectfully requested. If a telephone conference would be helpful in resolving, the Examiner is urged to contact the undersigned attorney at the telephone number noted.

Respectfully submitted,

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